Franchise Law Committee Meeting—Case Update
November 9, 2007
Jeffrey L. Fillerup, Luce, Forward

McGuire v. Coolbrands Smoothies Franchise LLC, 2007 Cal.App.Unpub.Lexis 6816 (Sixth App. Dist., 8-22-07)(affirmed finding that arbitration provision in franchise agreement was unconscionable because it was contract of adhesion, excluded punitive damages, banned class actions, and contained New York forum/arbitration selection clause)

Eberle v. Smith, 2007 U.S.Dist.Lexis 79557 (S.D. Cal., 10-26-07)(arbitration provision in written agreement was not enforceable because subsequent email exchanges among the parties evidence a novation and the new agreement created by emails did not include an arbitration provision)

Sherwood v. Blue Cross, 2007 U.S.Dist.Lexis 70816 (E.D. Cal., 9-13-07)(sexual harassment resulting in constructive termination did not fall within scope of arbitration agreement covering "terminations", and the arbitration provision was unenforceable because it was a contract of adhesion, limited discovery to one deposition, and required that the employee pay a filing fee)

Shroyer v. New Cingular, 498 F.3d 976 (9th Cir., 8-17-07)(class arbitration waiver in cell phone service contract unconscionable and unenforceable, invalidation of the arbitration provision is not preempted by the FAA)

Xnergy v. Hess Microgen, 2007 U.S.Dist.Lexis 63812 (S.D. Cal., 8-29-07)(denied defendant's motion for summary judgment regarding a breach of the implied covenant of good faith and fair dealing claim,   discussing and relying on In re Vylene)

Givemepower Corp. v. Pace Compumetrics, 2007 U.S.Dist.Lexis 59371 (S.D. Cal., 8-14-07)(denied defendant's motion to dismiss (FRCP 12(b)(6))   breach of implied covenant of good faith and fair dealing claim, discussing and relying on In re Vylene)

Petroleum Sales v. Valero Refining, 2007 U.S.Dist.Lexis 70205 (N.D. Cal., 9-11-07)(court reduced attorney's fees awarded for breach of franchise agreement from $422,000 to $387,000)

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